

REMARKS

The Office Action requires election of an invention from the following: Group I including claims 1-4, 9-16 and 19-20, drawn to a toy, classified in class 119, subclass 707; and Group II including claims 17 and 18, drawn to a method, classified in class 119, subclass 702.

Applicant traverses the restriction requirement as applied to Groups I and II on the grounds that such restriction requirement is not timely, as being made after final rejection, and as contrary to 37 CFR 1.142 which states that “[s]uch requirement will normally be made before any action on the merits; however, it may be made at any time before final action.” (emphasis added)

Further, applicant traverses the restriction requirement as applied to Groups I and II on the additional grounds that a “process and apparatus for its practice can be shown to be distinct inventions, [only] if either or both of the following can be shown: (A) that the process *as claimed* can be practiced by another materially different apparatus or by hand; or (B) that the apparatus *as claimed* can be used to practice another and materially different process.” (See MPEP 806.05(e)).

Additionally, applicant traverses the restriction requirement as applied to Groups I and II on the grounds that the Examiner has failed to provide compelling

evidence as to why examination of all of the claims presents a serious burden on the Examiner.

With regard to the first of the stated grounds for traverse, the Examiner alleges that applicant's amendment somehow necessitated the Restriction Requirement in the presently issue Office Action. However, the Examiner offers no plausible basis for this position. The only revisions effected in the claims in the most recent amendment filed by applicant on June 7, 2007 added a presentation of the toy to an animal, and a subsequent handling of the toy by the human user by the same structure identified in the article claims as the intended region to be hand held. From a reading of the claims directed to the toy in view of the specification, it is clear that as a toy, it will be presented to an animal for play, and that the toy is specially configured to provide designed incentive for the animal to access the animal access region on a more likely basis than the animal restricted region. Furthermore, it is also clear from the article claims directed to the toy, that the region specifically designed for grasping in the hand of the human user is the animal restricted region, to thereby reduce contact with saliva after the animal has held the animal access region in its mouth. These article recitation for the toy match precisely the nature of the recitations added by applicant to method claim 17. Applicant can therefore find no reason why these amendments in fact necessitated the Restriction Requirement, as alleged by the Examiner in an apparent attempt to circumvent the requirement that

a restriction be asserted before final rejection (a final Office Action was mailed October 13, 2005, more than two years ago), and the Examiner has offered no explanation in this regard.

With regard to the second of the grounds for traverse set forth above, the two bases for establishing the propriety of a restriction requirement have not been met. As regards the first prong, the process as claimed cannot be practiced by another materially different apparatus or by hand. Method claim 17 contains recitations directed to a toy having the features addressed generally in article claim 1, i.e., an animal access region and an animal restricted region, defined in the same context. Therefore, it is inconceivable that the Examiner can contend that the claimed method can use something other than such a configured toy. Regarding the second prong, applicant submits that it is not conceivable that the apparatus would be used to practice another and materially different process, since the intended purpose as a toy is made clear by the claim language and as considered in the context of the written disclosure. The novelty of the toy resides in its ability to serve as an interactive toy which limits user exposure to saliva of an animal, for example, a dog. Therefore, the use as stated in the method claim is a natural outcome of the claimed structure since, if the toy is accessed by a dog, the dog will automatically hold the toy by the animal access region more than the animal restricted region based upon the claimed

parameters which require this outcome, and the user will grasp in his/her hand the animal restricted region of claim1, since less animal saliva will accumulate there.

Lastly, with regard to the third of the bases for traverse, the Examiner has not stated any compelling reasons why examination of all of the claims presents a serious burden on the Examiner. (“If the search and examination of ~~all the claims in an~~ application can be made without serious burden, the examiner must examine ~~them~~ on the merits, even though ~~they include~~ claims to independent or distinct inventions.” MPEP §803). Rather, the Examiner simply asserts that since an animal might bite another part of the toy as claimed in the article claims the method somehow differs materially from the article claim directed to the toy. However, applicant respectfully submits that this assertion is without merit.

As addressed above, claim 17, which is directed to a method of using the toy of the article claims, in no way requires the animal to grip the toy exclusively in the animal access region, as intimated by the Examiner. Rather, the lack of such intended exclusivity is underscored by use of open-ended “comprising” language in the preamble of the method claim, which would clearly allow for other regions of the toy to be gripped in the animals mouth, in addition to the animal access region. Moreover, no express language has been recited in claim 17 that would exclude such other region from being accessed on occasion, as clearly indicative of the fact that such other access to regions other than the animal access region is fully expected, just

to a lesser degree. This is reflected in the article claims directed to the toy by language which recites in relative terms the likelihood to access the two differentiated regions.

Therefore, a proper restriction has not been set forth in view of these multiple deficiencies. It is further submitted that the lack of proper statement of reasons supporting the restriction requirement is indicative of the inappropriateness of such a requirement.


In the event the restriction requirement becomes final, applicant herein provisionally elects Group II including claims 17 and 18 for prosecution.

In view of the above, reconsideration and withdrawal of the restriction requirement are respectfully requested.

Applicant respectfully requests a two (2) month extension of time to extend the response date to December 12, 2007. Please find Check No. 1255 in the amount of \$230.00 to cover the above fee which accompanies a Petition For Extension filed herewith.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence I. Wechsler", written in a cursive style.

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